

SANDLER, REIFF & YOUNG, P.C.

CELA

2011 JAN 20 PM 4:00

RECEIVED
FEDERAL ELECTION
COMMISSION

January 20, 2011

Jeff S. Jordan, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20003

Re: MUR 6434: Indiana Democratic Party

By this letter, the Indiana Democratic Party (the "State Party") responds to a complaint alleging that a campaign mailer did not contain the required disclaimer.

The disclaimer on the mailing at issue was in full compliance with the requirements set forth in the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations. The mailing was paid for and distributed by the State Party in accordance with the regulations governing volunteer exempt mail, set forth in 11 C.F.R. §§ 100.147 and 110.11(e). Specifically, the party paid for the mailing using federal funds that did not include any funds transferred down from any national committee, in compliance with 11 C.F.R. § 100.147(g) and party volunteers distributed the mailing, in compliance with 11 C.F.R. § 100.147(d). Therefore, we respectfully request the Federal Election Commission (the "Commission") close this matter as the mailing is exempt volunteer activity, and the disclaimer was in full compliance with 11 C.F.R. § 110.11(e).

1. The State Party used the proper disclaimer for mailings that qualify as exempt activity under FEC regulations.

The State Party's mailing included a disclaimer that read "Paid for by the Indiana Democratic Party" contained in a printed box, set apart from the other contents of the communication, pursuant to 11 C.F.R. § 110.11. The complaint incorrectly asserts that the disclaimer should also state whether or not any candidate or candidate's committee authorized the communication.

11044304653

A public communication by a state party committee that is authorized by a candidate and that qualifies as exempt party activity must include a clear and conspicuous disclaimer giving the reader notice of the identity of the political committee that paid for the communication "but the disclaimer does not need to state whether the communication is authorized by a candidate, or any authorized agent of a candidate." 11 C.F.R. § 100.11(e). As explained below, the mailing qualifies as exempt party activity, therefore, it is in full compliance of this regulation.

2. The mailing qualifies as exempt party activity.

The Act exempts materials distributed "in connection with volunteer activities" from the definition of contribution and expenditure, when such distribution is made by a state political party committee on behalf of any nominee of such party. See 2 U.S.C. § 431(8)(B)(ix); 11 C.F.R. 100.147. The mailing at issue was made on behalf of Rep. Joe Donnelly, the party's nominee for Indiana's 2nd District Congressional race. The mailing is an informational piece about Mark Vogel, the Libertarian candidate opposing Rep. Donnelly. The Commission has held that "the content of campaign materials is not restricted under this exemption; it is almost entirely contingent upon who distributes the materials, not what those materials say." Advisory Opinion 2008-06 (Democratic Party of Virginia). Since Rep. Donnelly was the nominee of the party at the time of the mailing, only the remaining regulatory requirements of exempt party activity remain in question. See MURs 3824 and 3825 (Pennsylvania State Democratic Committee) (flyers attacking the opponent of the party's nominee, which contained no mention of the nominee herself, qualified for the exemption).

To qualify for the exemption, a state party must pay for campaign materials under certain conditions, which include: (a) the committee's payment of campaign materials is not for costs for general public communication or political advertising, which includes direct mail; (b) the portion of the payment allocable to a federal candidate must be paid with federal funds; (c) the committee's payment must not be paid for from funds designated for a particular federal candidate by the donor; (d) campaign materials must be "distributed by volunteers and not by commercial or for-profit operations; (e) the committee's payment must be reported as distributions; and (g) campaign materials must not be purchased either directly by a national committee or with funds donated by the national committee to the state committee. 11 C.F.R. § 100.147(a)-(e), (g).

The mailing satisfies the regulatory requirements necessary to qualify for the exemption. The information for the mailer was not obtained from commercial mailing lists and the complaint provides no information to the contrary. The materials were paid for exclusively with federal funds, not from funds designated for a particular candidate by the donor or from funds received from a national party committee, nor were they purchased by the national committee or with funds donated by the national committee. (See attachment wire payment, invoice and sign off). Thus the mailing satisfies 11 C.F.R. 100.147(a), (b), (c), (e), (g).

11044304654

Finally, the mailings included substantial volunteer involvement that is more than sufficient to qualify as exempt activity under 11 C.F.R. § 100.147(d). In matters involving state party committee mailings under the volunteer exemption, the Commission found that there was substantial volunteer involvement to qualify for the volunteer exemption in the following MURs:

- 1) At least five volunteers unpacked, bundled, sorted by address, bagged, tagged, plastic wrapped and loaded the mailers onto trucks hired for transport to the Bulk Mail Center (MUR 5824);
- 2) Volunteers affixed a postage mark on each piece, placed a label on them, and took them to the post office (MUR 4851); and
- 3) Volunteers opened cartons of direct mail materials, stamped the return address and bulk mail permit on each piece, sorted the pieces and transported them to the post office. A vendor pre-sorted the mail piece and pre-batched the mailing by zip code and carrier route (MUR 3218).

In this case, as seen in the attached photographs, volunteers sorted, bundled, and stacked the mail into trays. Attached to the response, please find declarations from Cameron Radford and Rohan Patel. These two state party employees oversaw and witnessed the level of volunteer activity for the mailing at issue in this matter. As each attests, there was sufficient volunteer activity for the mailing on behalf of the State Party. Also attached to this response are pictures taken during the volunteer preparation of the mailing showing the volunteers assisting in the process.

Conclusion

As we have demonstrated, the State Party did not violate the Act or Commission regulations because the mailing in this matter qualifies as exempt party activity and thus contained the correct disclaimer. Therefore, we respectfully request that the Commission promptly close this matter.

Sincerely,



Neil Reiff
Counsel to the Indiana Democratic
Party